

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**PETER JAGER,**

Plaintiff,

- against -

**BOSTON ROAD AUTO MALL, INC.,**

Defendant.

14 Civ. 614 (LLS)<sup>1</sup>

**OPINION & ORDER**

Plaintiff Peter Jager sued defendant Boston Road Auto Mall, Inc. ("BRAM") for violation of the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601 et seq., the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 et seq., and the New York Lemon Law, NY. Gen. Bus. Law § 198-b; for deceptive business practices, NY. Gen. Bus. Law § 349; and for fraud.

Jager moves for summary judgment in his favor on the TILA claim. BRAM moves for summary judgment dismissing the TILA and Magnuson-Moss claims and declining to exercise supplemental jurisdiction over the state law claims. For the reasons that follow, Jager's motion is granted, the Magnuson-Moss claims are dismissed for lack of subject-matter jurisdiction, and I decline to exercise supplemental jurisdiction over the state law claims.

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<sup>1</sup> Plaintiff has by error filed most of his papers in this action citing the wrong year as docket number 13 Civ. 614.

**FACTS**

According to Jager's uncontradicted statement of facts, BRAM sells used cars and arranges financing for those sales. Pl.'s Local Rule 56.1 Statement of Facts ¶¶ 2-3, Dkt. No. 14. On November 21, 2013, Jager purchased a 2007 Chrysler Pacifica from BRAM. Id. ¶ 4. The purchase was financed by BRAM, and the only disclosure of the financing terms was a single-page summary ("pricing recap"). See id. ¶ 5.

The financial terms are listed in two columns on the bottom half of the pricing recap (spacing and underlining in original; the text in brackets is circled in original):

Sales Price:	\$9,300.00	Down Payment:	\$2,500.00
8.8750% Sales Tax:	825.38	Pick-Up Note:	\$350.00
Government Fees:	400.00		-----
Tracking Device:	495.00	Amount Financed:	\$9,060.38
Dealer Fee:	395.00	Financing at 20.00% APR:	3,530.36
Service Charge:	495.00		-----
	-----	Balance Due:	\$12,590.74
TOTAL:	\$11,910.38		=====
	=====		
		1 Pick-Up Note payment of	\$350.00
		Due on <u>12/21/13</u>	
		[83] payments of	[\$150.]00 each
		Payable Semi-Monthly beginning	11/30/13
		Plus one final payment of	\$140.74
		Final payment will be due on	<u>5/15/17</u>

The actual document is attached to this Opinion as Exhibit A.

**DISCUSSION**

Under Federal Rule of Civil Procedure 56(a), "the court shall grant summary judgment if the movant shows that there is

no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."

### **Truth in Lending Act**

Jager seeks summary judgment in his favor on the TILA claim and an award of statutory damages. BRAM acknowledges that the transaction is a closed end consumer credit transaction and that it is a creditor subject to the TILA disclosure requirements of 15 U.S.C. § 1638(a). See Westphal Affirm. ¶ 12, Nov. 20, 2014, Dkt. No. 23. Accordingly, Jager must show that BRAM violated one of the TILA disclosure requirements that gives rise to statutory damages.

"It is the purpose of [the Truth in Lending Act] to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit . . . ."

15 U.S.C. § 1601(a). "TILA endeavors to enable consumers to evaluate credit offers separately from the purchase of merchandise, and thereby to create an active market providing more efficient credit prices." Poulin v. Balise Auto Sales, Inc., 647 F.3d 36, 39 (2d Cir. 2011) (quoting Cornist v. B.J.T. Auto Sales, Inc., 272 F.3d 322, 326 (6th Cir. 2001)). "The Act is remedial in nature, designed to remedy what Congressional hearings revealed to be unscrupulous and predatory creditor

practices throughout the nation. Since the statute is remedial in nature, its terms must be construed in liberal fashion if the underlying Congressional purpose is to be effectuated." N.C. Freed Co. v. Bd. of Governors of Fed. Reserve Sys., 473 F.2d 1210, 1214 (2d Cir. 1973) (footnote omitted); see also Grant v. Imperial Motors, 539 F.2d 506, 510 (5th Cir. 1976) ("[O]nce the court finds a violation, no matter how technical, it has no discretion with respect to the imposition of liability.").

#### TILA Liability

Jager argues that BRAM violated TILA by failing to comply with certain requirements of 15 U.S.C. § 1638(a):

For each consumer credit transaction other than under an open end credit plan, the creditor shall disclose each of the following items, to the extent applicable:

. . . . .

(3) The "finance charge," not itemized, using that term.

. . . . .

(5) The sum of the amount financed and the finance charge, which shall be termed the "total of payments."

. . . . .

(7) In a sale of property or services in which the seller is the creditor required to disclose pursuant to section 1631(b) of this title, the "total sale price," using that term, which shall be the total of the cash price of the property or services, additional charges, and the finance charge.

(8) Descriptive explanations of the terms "amount financed," "finance charge," "annual percentage rate," "total of payments," and "total sale price" as

specified by the [Consumer Financial Protection] Bureau.

Jager also contends that BRAM violated TILA by not complying with the requirement that "[t]he terms 'annual percentage rate' and 'finance charge' shall be disclosed more conspicuously than other terms." 15 U.S.C. § 1632(a).

Here, the pricing recap, which is the only financing disclosure, never uses the required terms "total of payments" or "total sale price." Rather the pricing recap uses the term "TOTAL" for the cash price of the car before the calculation of an additional \$3,530.36 finance charge. The sum of the amount financed and the finance charge, which should be the "total of payments," is termed the "Balance Due." That does not comply with § 1638(a)(5). The "total of the cash price of the property or services, additional charges, and the finance charge," which is the the "total sale price" defined in the statute (and which can be computed as \$15,440.74), is not disclosed in the pricing recap anywhere. That does not comply with § 1638(a)(7).

The pricing recap also does not comply with TILA because it does not disclose the finance charge "using that term," as required by § 1638(a)(3), and the annual percentage rate and finance charge are not disclosed more conspicuously than other terms, as required by § 1632(a). Instead, those terms are combined on one line as "Financing at 20.00% APR: 3,530.36." By

combining those terms, the pricing recap discloses them less conspicuously than other terms, each of which appear on their own line.

Finally, § 1638(a)(8) requires that certain terms be accompanied by descriptive explanations specified by the Consumer Financial Protection Bureau. The terms and explanations are:

- amount financed: "the amount of credit provided to you or on your behalf" (12 C.F.R. § 1026.18(b))
- finance charge: "the dollar amount the credit will cost you" (id. subsec. (d))
- annual percentage rate: "the cost of your credit as a yearly rate" (id. subsec. (e))
- total of payments: "the amount you will have paid when you have made all scheduled payments" (id. subsec. (h))
- total sale price: "the total price of your purchase on credit, including your downpayment of \$\_\_" (id. subsec. (j)).

The pricing recap does not comply with those requirements: it includes no descriptive explanation for any of those terms.

#### TILA Damages

Jager seeks only statutory damages.<sup>2</sup> TILA § 1640(a) provides that

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<sup>2</sup> "The Court should award Jager his statutory damages . . . ." Pl.'s Memorandum of Law 12, Oct. 17, 2014, Dkt. No. 13.

any creditor who fails to comply with any requirement imposed under this part . . . with respect to any person is liable to such person in an amount equal to the sum of--

. . .

(2)(A)(i) in the case of an individual action twice the amount of any finance charge in connection with the transaction . . . .

However not all, but only certain, TILA violations give rise to statutory damages. For those disclosures required by Section 1638(a) (as in this cases) statutory damages are only given for violations of paragraphs (2) ("insofar as it requires a disclosure of the 'amount financed'"), (3)-(6), and (9). 15 U.S.C. § 1640(a).

Of BRAM's violations of § 1638(a),<sup>3</sup> the provisions concerning the definition of the finance charge and the total of payments, § 1638(a)(3), (5), give rise to statutory damages. Those violations may be formal in nature, but they go to a core purpose of TILA. By mandating the use of standard terms, TILA enables the consumer "to compare more readily the various credit terms available to him." 15 U.S.C. § 1601(a). When a creditor

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<sup>3</sup> Violations of § 1632(a) do not give rise to statutory damages unless they also violate the "closed list" of § 1638(a) subsections that give rise to statutory damages. In re Ferrell, 539 F.3d 1186, 1191-92 (9th Cir. 2008) (alterations in original) (citations omitted); accord Kelen v. World Fin. Network Nat. Bank, 763 F. Supp. 2d 391, 393 (S.D.N.Y. 2011).

uses non-standard terms, it frustrates the consumer's ability to compare different offers of credit.

On the basis of the undisputed facts, BRAM violated TILA by not correctly complying with the requirement of defining the finance charge and total of payments. Accordingly, Jager is granted summary judgment on the TILA claim, and because those violations give rise to statutory damages, he is awarded statutory damages.

The amount of statutory damages depends on the type of transaction. For an individual action concerning a closed end consumer credit transaction not secured by real property, statutory damages are "twice the amount of any finance charge in connection with the transaction." 15 U.S.C. § 1640(a)(2)(A)(i). However, statutory damages for such transactions are capped at \$2,000. See Koons Buick Pontiac GMC, Inc. v. Nigh, 543 U.S. 50, 62-63, 125 S. Ct. 460, 468-69 (2004).

Here, the finance charge, as listed in the pricing recap, is \$3,530.36. Twice that is \$7,060.72, so Jager is awarded the maximum statutory damages of \$2,000.

#### **Magnuson-Moss Warranty Act**

BRAM moves for summary judgment on the Magnuson-Moss Warranty Act claims on the ground that Jager's claim does not



meet the \$50,000 amount in controversy requirement for Magnuson-Moss claims brought in federal court.

Magnuson-Moss provides that:

. . . a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this chapter, or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief--

(A) in any court of competent jurisdiction in any State or the District of Columbia; or

(B) in an appropriate district court of the United States, subject to paragraph (3) of this subsection.

15 U.S.C. § 2310(d)(1). But it also limits the subject-matter jurisdiction of federal courts to hear Magnuson-Moss claims, directing that no such "claim shall be cognizable" in a federal court--

(A) if the amount in controversy of any individual claim is less than the sum or value of \$25;

(B) if the amount in controversy is less than the sum or value of \$50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit; or

(C) if the action is brought as a class action, and the number of named plaintiffs is less than one hundred.

15 U.S.C. § 2310(d)(3).

"Jager does not dispute that his claim is for less than \$50,000." Pl.'s Reply Memorandum 9, Dkt. No. 26. Accordingly, there is no independent subject-matter jurisdiction under

Magnuson-Moss. However, as there is independent subject-matter jurisdiction over the TILA claim, Jager urges this Court to exercise supplemental jurisdiction over the Magnuson-Moss claims.

28 U.S.C. 1367(a) states that,

[except] as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

Despite some different views in other circuits, see, e.g., Voelker v. Porsche Cars N. Am., Inc., 353 F.3d 516, 522 (7th Cir. 2003); Barnes v. West, Inc., 249 F. Supp. 2d 737, 739-40 (E.D. Va. 2003), the better reading of Congress's command in the Magnuson-Moss Warranty Act that no claim "shall be cognizable in a suit brought" in federal court "if the amount in controversy is less than the sum or value of \$50,000," 15 U.S.C. § 2310(d)(3), is that, by enacting the specific jurisdictional limitations for Magnuson-Moss claims in federal court, Congress foreclosed the exercise of supplemental jurisdiction over Magnuson-Moss claims for less than \$50,000. See Ebin v. Kangadis Food Inc., No. 13 Civ. 2311 (JSR), 2013 WL 3936193, at \*1 (S.D.N.Y. July 26, 2013) (The contention that the Class Action

Fairness Act creates an alternative basis for federal jurisdiction over Magnuson-Moss claims "is incorrect. Indeed, it is flatly contradicted by the plain text of the MMWA. As stated above, the MMWA provides that '[n]o claim shall be cognizable in a suit brought under paragraph (1)(B) of this subsection'--i.e., a suit brought under the MMWA in federal district court--unless the MMWA's independent jurisdictional requirements are met. Since plaintiffs concededly cannot meet the MMWA's jurisdictional prerequisites, their MMWA is dismissed."); Lieb v. Am. Motors Corp., 538 F. Supp. 127, 140 (S.D.N.Y. 1982) ("In enacting Magnuson-Moss, Congress implicitly negated pendent jurisdiction of claims made under the statute that amount to less than \$50,000.").

Accordingly, the Magnuson-Moss claims are dismissed for lack of subject-matter jurisdiction.

### **State Law Claims**

Jager and BRAM are both citizens of New York. See Compl. ¶¶ 1-2. Accordingly, there is no diversity jurisdiction over the state law claims. See 28 U.S.C. § 1332(a). BRAM urges this Court to decline to exercise supplement jurisdiction over the state law claims.

"The district courts may decline to exercise supplemental jurisdiction over a claim . . . if . . . the claim substantially

predominates over the claim or claims over which the district court has original jurisdiction . . . ." 28 U.S.C. § 1367(c)(2).

The "substantially predominates" standard of § 1367(c)(2) creates a "limited exception" to the exercise of supplemental jurisdiction that should be invoked only when "permitting litigation of all claims in the district court can accurately be described as allowing a federal tail to wag what is in substance a state dog."

Luongo v. Nationwide Mut. Ins. Co., No. 95 Civ. 3190 (MBM), 1996 WL 445365, at \*5 (S.D.N.Y. Aug. 7, 1996) (quoting Borough of W. Mifflin v. Lancaster, 45 F.3d 780, 789 (3d Cir. 1995)).

Here, Jager's claims for deceptive business practices, fraud, and violation of the New York State Lemon Law involve factual and legal issues wholly distinct from the TILA claim. The TILA claim was determined, without factual dispute and solely as a matter of law, with reference to the single page pricing recap, and is limited to \$2,000 in damages. Adjudication of the state claims implies determining conflicting factual accounts concerning representations made by BRAM to Jager and the actions of the parties following the sale, which "are more complex[,] require more judicial resources to adjudicate[, and] are more salient in the case as a whole than the federal law claims." Ibid (quoting Diven v. Amalgamated Transit Union Int'l & Local 689, 38 F.3d 598, 601 (D.C. Cir. 1994)). Furthermore, they involve no issue of federal interest; Congressional

policies exclude small Magnuson-Moss claims and diversity suits involving less than \$75,000 from occupying federal courts and juries. Nor is there any need for federal resources and jury time to be expended on the (so far, unexamined) state law issues over the purchase of a used private automobile.

If the parties are unable to settle the amount of attorneys' fees to which Jager is entitled under TILA, I will determine it. As to the state law claims, I decline to exercise supplemental jurisdiction.

#### **CONCLUSION**

Plaintiff Peter Jager's motion for partial summary judgment on the TILA claim (count I of the complaint) (Dkt. No. 12) is granted to the extent of \$2,000 and attorneys' fees.

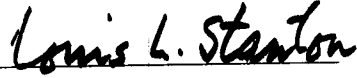
Defendant Boston Road Auto Mall, Inc.'s cross-motion for partial summary judgment (Dkt. No. 22) is granted to the extent that the Magnuson-Moss claims (counts II, III, and IV of the complaint) and the remaining state Lemon Law and common law claims (counts V, VI, and VII of the complaint) are dismissed without prejudice for lack of subject-matter jurisdiction.

The clerk is requested to enter judgment accordingly with costs and disbursements according to law.

Jager may move separately for attorneys' fees under Federal Rule of Civil Procedure 54(d)(2).

So ordered.

Dated: New York, New York  
January 15, 2015

  
\_\_\_\_\_  
LOUIS L. STANTON  
U.S.D.J.

# **EXHIBIT A**

Report: C-1-L-P-2

Sale Date: 11/21/13

## BUYER

Stock #: 263  
 Name and address: PETER P JAGER  
 754 MACE AVE  
 BRONX, NY 10467  
 County: BRONX  
 Co-Buyer: None  
 Home Phone:  
 Work Phone:  
 Cell Phone: 347-504-2717

Drivers License: 406521454 NY

## SELLER

BOSTON ROAD AUTO MALL  
 3040 LURTING AVE  
 BRONX, NY 10469  
 718-708-5868

## VEHICLE

07 CHRYSLER PACIFICA; 4DR  
 VIN: 2A8GF48X17R213909  
 Color(s): BLUE  
 Mileage: 95,671

## Vehicle Features:

Driver Air Bag; Passenger Air Bag; Front Head Air Bag; Rear Head Air Bag; Multi-Zone A/C; A/C;  
 Security System; AM/FM Stereo; CD Player; ABS; Cruise Control; All Wheel Drive; Power Door  
 Locks; Power Driver Seat; Power Passenger Seat; Cloth Seats; Bucket Seats; Power Steering;  
 Adjustable Steering Wheel; Traction Control; Aluminum Wheels; Power Windows; A/T; Premium  
 Sound System; Air Suspension; Engine Immobilizer; CD Changer; Leather Seats

Sales Price: \$9,300.00  
 8.8750% Sales Tax: 825.38  
 Government Fees: 400.00  
 Tracking Device: 495.00  
 Dealer Fee: 395.00  
 Service Charge: 495.00

TOTAL: \$11,910.38

Down Payment: \$2,500.00  
 Pick-Up Note: \$350.00

Amount Financed: \$9,060.38  
 Financing at 20.00% APR: 3,530.36

Balance Due: \$12,590.74

1 Pick-Up Note payment of \$350.00  
 Due on 12/21/13

83 payments of \$150.90 each  
 Payable Semi-Monthly beginning 11/30/13  
 Plus one final payment of \$140.74  
 Final payment will be due on 5/15/17

X *Peter P. Jager*  
 PETER P. JAGER

X *John P. Jager*  
 BOSTON ROAD AUTO MALL